

### Remarks

Applicants have carefully reviewed the Advisory Action mailed on January 26, 2006 and hereby file a Request for Continued Examination. With this paper, Applicants cancel claims 32-51 and submit new claims 52-93. The new claims have support in the originally filed specification; for example, the new claims are supported by Figures 1-3. Claims 1-4 were previously cancelled and claims 5-31 have been withdrawn from consideration. An error was made in presenting the claims in the Response dated January 3, 2006. The amended new claim set is presented in order to replace this incorrectly amended claim set and in order to more fully describe the invention. Applicants assert that the newly presented claims are allowable over the prior art cited in the preceding Office Action.

Claims 32-35, 37 and 39-51 were rejected under 35 U.S.C. §102(b) as being anticipated by Daniel et al., U.S. Patent No. 5,814,064 (hereinafter “Daniel”). These claims have now been cancelled. However, Applicants assert that newly presented claims 52-93 are allowable over this reference.

Daniel discloses a distal protection device. In Figures 18A-D of Daniel, an expandable member 262 appears to be a mesh or braid portion and is apparently attached at one end to the distal end of an inner wire 252 and at the other end to the distal end of an outer tube 254. When the distal ends of the inner wire 252 and the outer tube 254 are moved toward one another, the expandable member 262 can apparently expand outward into the shape of a filter as shown in Figure 18B. The expansion of the expandable member 262 apparently causes the mesh or braided material to fold over on itself, forming the filter as shown in Figure 18B. It would appear that, as the blood flows

through the filter of Figure 18B, the blood will encounter both layers of the folded filter mesh or braid.

In contrast, claim 52 recites, in part, a filter that has a filtering region and an attachment region. The filtering region has a single layer of filter membrane that defines a filter basket and extends between the major opening in the filtering region and the distal end of the filtering region. Further, the filter membrane further comprises first and second tapered portions. The first tapered portion defines a first included angle and the second portion extends proximally from a proximal portion of the first tapered portion and defines a second included angle that is larger than the first included angle.

Daniel does not appear to disclose at least a filter as described in claim 52 that has a filtering region with a single layer of filter membrane. Figure 18B of Daniel has been consistently referred to in rejecting the claims of the current application. However, as described above, in order to pass through the filter shown in Figure 18B, blood passes through two layers of filtering mesh material. Thus, the filter shown in Figure 18B cannot be considered a filter with a filtering region that has a single layer of filter membrane.

On page 2 of the October 31, 2005 Office Action it was asserted that Daniel does disclose a single layer of filter membrane at column 3, lines 35-42. However, this portion of Daniel is actually describing Figure 1 of Daniel. According to M.P.E.P. §2131, in order for a reference to anticipate a claim, each and every element of that claim must be found in a single embodiment in the reference. Applicants respectfully assert that a portion of the description of Figure 1 in Daniel cannot be taken in conjunction with the description of Figure 18B for the purposes of anticipating a claim. Simply put, Figure

18B of Daniel shows a filter in which blood has to pass through two layers of filter mesh in order to pass through the filter, and this cannot be described as a filter that has a single layer filter membrane.

Because Daniel does not appear to disclose all elements of the filter described in claim 52, Applicants assert that claim 52 is allowable over Daniel. Because they depend on claim 52 and because they contain additional patentably distinct elements, Applicants assert that claims 53-71 are also allowable over Daniel.

Further, Applicants also assert that all elements of claim 72 do not appear to be disclosed in Daniel, and thus claims 72-92 are allowable over Daniel. Claim 72 recites, in part, a filter with a filtering region and an attachment region. The filtering region includes a major opening adjacent a proximal end of the filtering region, and the attachment region comprises at least one strut that extends proximally from adjacent the major opening to the elongate shaft. In addition, the filtering region includes a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region.

Applicants assert that Daniel is missing at least two portions of the structure described in claim 72. First, as mentioned above, Daniel does not appear to describe a filter with a single layer of filter membrane extending between the major opening of the filtering portion and the distal end of the filtering portion. In addition, Figures 18A-D do not appear to show any attachment structure that comprises at least one strut extending proximally from adjacent the major opening to the elongate shaft.

Because all elements of claim 72 do not appear to be disclosed in Daniel, Applicants respectfully assert that claim 72 is allowable over Daniel. Because they are

dependent on claim 72 and because they contain additional patentably distinct elements, Applicants also assert that claims 73-93 are also allowable over Daniel.

Claims 50 and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Daniel in view of Gray et al., U.S. Publication No. 2002/0045916 (hereinafter "Gray"). Claims 50 and 51 have been cancelled. Further, as mentioned above, Daniel does not appear to disclose each and every element of new claims 52-93. Applicants assert that, because Gray does not appear to disclose the elements of claims 52-93 that are missing from Daniel, the pending claims are allowable over the combination of Daniel and Gray.

Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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